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9 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 PAUL ROSS, an individual,

12 Plaintiff,

13 v.

14 FRED MEYER STORES, INC., an Ohio
State Corporation and subsidiary of The
Kroger Co., doing business within the State
of Washington,

15 Defendants.
16

Civil Case No. 09-05285 FDB

STIPULATION AND ORDER
REGARDING THE PRODUCTION AND
USE OF CERTAIN DOCUMENTS

17 Pursuant to the Court's authority under Rule 26(c) of the Federal Rules of Civil
18 Procedure, Local Rule CR 5(g), and the parties' stipulation, it is hereby ORDERED:

19 1. **Specifically Designated PROTECTED Documents.** The parties have
20 requested or anticipate requesting the production of documents containing confidential personnel
21 data relating to employees and/or former employees of defendant Fred Meyer Stores, Inc. ("Fred
22 Meyer"). Such documents include personnel files, medical information, tax records, and other
23 confidential information. Public disclosure of these documents would be irretrievably damaging
24 both to third-party individuals employed by or previously employed by Fred Meyer, and/or to Fred
25 Meyer, and the parties agree that these documents should be produced only if they are protected
26 from public disclosure. As such, a protective order is appropriate as Fred Meyer's duty to protect its

1 employees' confidential information outweighs the public's interest in reviewing these documents as
2 part of this litigation. Accordingly, all such documents produced by plaintiff, Fred Meyer, or third
3 parties with a duty to protect the confidential data (e.g., healthcare providers) will be marked as
4 "PROTECTED" and thereby subject to the provisions of this protective order.

5 2. **No Waiver.** The inadvertent, unintentional, or *in camera* disclosure of any of
6 these PROTECTED documents (or information therein) or any document subject to confidentiality
7 protection under this Order but not marked as such (or information therein), shall not, under any
8 circumstances, be deemed a waiver, in whole or in part, of any party's claim of confidentiality.
9 Further, nothing contained in this Order, and no action taken pursuant to it, shall prejudice or waive
10 the right of any party to contest the alleged relevancy, admissibility, or discoverability of any
11 document or information, whether marked PROTECTED or not.

12 3. **Use of PROTECTED Documents.**

13 (a) The use of any PROTECTED documents or information therein shall be
14 restricted to use for preparation and trial of this litigation in the manner described herein, and shall
15 not be used for any other purpose.

16 (b) Except with the prior written consent of the designating party or as otherwise
17 expressly permitted by this order, PROTECTED documents and the information therein shall not be
18 revealed to any person, except as follows:

19 (i) PROTECTED documents and information therein may be revealed to
20 any attorney of record for this action and to persons regularly employed by such attorneys to assist in
21 this litigation to the extent reasonably necessary to render professional services in this action;

22 (ii) PROTECTED documents and information therein may further be
23 revealed to, and a copy given to an accountant, economist, or other person who has been retained by
24 counsel in this action as a consultant or as an expert witness; and

25 (iii) PROTECTED documents and the information revealed therein may be
26 revealed to deponents during their depositions.

1 (iv) Any non-party shown a PROTECTED document subject to this order
2 shall sign the attached Exhibit 1 or shall affirm under oath in their deposition that the document is
3 PROTECTED and covered by this order.

4 (c) The attorneys of record are responsible for employing reasonable measures,
5 consistent with this Order, to control duplication of, access to, and distribution of copies of
6 PROTECTED documents and the information therein. Each copy of a PROTECTED document
7 must have the legend "PROTECTED" on its face. In no event shall the parties duplicate any
8 PROTECTED documents except for (i) working copies and for (ii) filing in court under seal or with
9 redactions agreed to by the opposing party. Each copy of a PROTECTED document shall be
10 considered a PROTECTED document governed by this protective order.

11 (d) The parties have access to all PROTECTED documents, subject to the
12 limitations of this order. To the extent either party wishes to change the terms of this order, counsel
13 shall confer either by telephone or in person with the opposing party's counsel in an attempt to agree
14 upon any proposed changes prior to filing any motion to amend this protective order.

15 (e) Prior to filing with the court any document marked PROTECTED, the parties
16 will confer in good faith as to reasonable redactions to the document that would remove confidential
17 information or otherwise protect the confidential information contained therein. Redactions
18 specified in Local Rule CR 5.2 shall be presumed to be reasonable. If the parties agree on
19 redactions, the PROTECTED document may be filed with the court with the redactions. If the
20 parties do not agree on redactions, the PROTECTED document may only be filed under seal.

21 4. **Trial.** Prior to any trial on the merits in this action, the parties shall mutually
22 discuss and attempt to agree on the method and manner by which the confidentiality of the
23 PROTECTED documents and information subject hereto will be preserved at time of trial. In the
24 event that the parties are unable to agree on the method and manner, they shall seek court
25 intervention and ruling on the issue in advance of trial. The party seeking confidentiality has the
26 responsibility for establishing a reasonable method of preserving such confidentiality at trial.

1 5. **Termination.** Within thirty (30) days after final conclusion of all aspects of
2 this litigation, all PROTECTED documents and all copies of the same (other than those in the
3 possession of outside counsel or filed with the Court) shall, at the request of the party producing
4 and/or designating the documents, be returned to that party. If, after thirty (30) days after final
5 conclusion of all aspects of this litigation, the party who produced and/or designated the
6 PROTECTED documents does not request return of the documents, the documents shall be
7 destroyed. Within forty-five (45) days after final conclusion of all aspects of this litigation, the party
8 returning or destroying PROTECTED documents shall certify under oath that all PROTECTED
9 documents have been returned or destroyed.

10 6. **Modification.** This Order may be modified only by: (1) motion to the Court
11 following compliance with the meet and confer provision of paragraph 3 of this Order, or (2) by the
12 Court's own motion after notice to the parties and an opportunity to be heard.

13 DATED this 11th day of February, 2010.

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FRANKLIN D. BURGESS
UNITED STATES DISTRICT JUDGE

Presented by:
MILLER NASH LLP

/s/
Susan K. Stahlfeld, WSB No. 22003
Adam Jussel, WSB No. 40936
Attorneys for Defendant

Also presented by:

/s/
Joan K. Mell WSB No. 21319
Attorneys for Plaintiff

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2 **Exhibit 1**

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4 **AGREEMENT OF EXPERT, CONSULTANT, OR WITNESS**
5 **TO BE BOUND BY PROTECTIVE ORDER**

6 The undersigned, _____ (print or type name), an expert, consultant, or
7 designated representative of _____ (print or type name of party or law firm),
8 in connection with PAUL ROSS V. FRED MEYER STORES, INC., an Ohio State Corporation and
9 subsidiary of The Kroger Co., doing business within the State of Washington,, United States District
10 Court for the Western District of Washington at Seattle, Civil Case No. 09-05285 FDB, hereby
11 acknowledges that he or she has received a copy of the Protective Order entered in this action, which
12 is attached hereto, and has read and agreed to be bound by all of the provisions thereof.
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14 DATED: _____

Signature

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